Assembly Bill No. 2124

CHAPTER 732

An act to add and repeal Chapter 2.96 (commencing with Section 1001.94) of Title 6 of Part 2 of the Penal Code, relating to criminal sentencing.

[Approved by Governor September 28, 2014. Filed with
Secretary of State September 28, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2124, Lowenthal. Misdemeanor offenses: deferral of sentencing: pilot program.

Existing law authorizes a county to establish a pretrial diversion program for defendants who have been charged with a misdemeanor offense and authorizes other diversion programs, including for defendants with cognitive developmental disabilities, defendants in nonviolent drug cases, and traffic violations.

This bill, until January 1, 2020, would establish a pilot program in the County of Los Angeles to authorize a judge in the superior court, at the judge's discretion and over the objection of the prosecution, to defer sentencing a defendant who has submitted a plea of guilty or nolo contendere to a misdemeanor for a period not to exceed 12 months. The bill would specify certain criteria that would disqualify a defendant from these provisions, including having been previously deferred or the charge including specified crimes. The bill would authorize the judge to order the defendant to comply with terms, conditions, and programs, as specified, and would require a defendant whose sentence is deferred to complete all conditions ordered by the court, make full restitution, and comply with specified court orders in order to have his or her plea stricken. The bill would require the judge, at the end of the deferral period and if the defendant complies with all terms, conditions, and programs required by the court, to strike the defendant's plea and dismiss the action against the defendant. The bill would require the court, a probation officer, or the prosecuting attorney to make a motion for entry of judgment, and would require the court to sentence the defendant, if the defendant reoffends or fails to comply with the terms, conditions, or programs ordered by the court.

The people of the State of California do enact as follows:

SECTION 1. Chapter 2.96 (commencing with Section 1001.94) is added to Title 6 of Part 2 of the Penal Code, to read:

CHAPTER 2.96. DEFERRAL OF SENTENCING PILOT PROGRAM

1001.94. (a) There is hereby established in the County of Los Angeles the Deferral of Sentencing Pilot Program.

(b) A judge in the superior court of the County of Los Angeles may, at his or her discretion and over the objection of a prosecuting attorney, defer sentencing a defendant who has submitted a plea of guilty or nolo contendere to a misdemeanor pursuant to this chapter. Sentencing may be deferred for a period not to exceed 12 months, and the judge may order the defendant to comply with terms, conditions, or programs that the judge deems appropriate based on the defendant's specific situation.

(c) A defendant may make a motion for imposition of diversion pursuant to this section.

(d) This chapter shall apply to first-time misdemeanor defendants, except as provided in Section 1001.98, in order to reduce the stigma that is often associated with a criminal record and to increase the likelihood that a defendant will be able to obtain employment.

(e) This chapter shall not be construed to preempt any current or future diversion programs. Nothing in this chapter is intended to limit the rights of a victim under Section 28 of Article I of the California Constitution.

(f) It is the intent of the Legislature that no new diversion programs are created, and that judges shall order a defendant, for whom judgment is deferred, to complete the same obligations that would have been imposed had judgment been entered. The only difference between this chapter and current practice is that under this chapter judgment will not be entered.

1001.95. A defendant whose sentence is deferred pursuant to this chapter shall be required to complete all of the following in order to have his or her plea stricken:

(a) Complete all conditions ordered by the court.

(b) Make full restitution.

(c) Comply with a court-ordered protective order, stay-away order, or order prohibiting firearm possession, if applicable.

1001.96. (a) If the defendant, during the period of deferral imposed pursuant to subdivision (a) of Section 1001.94, complies with all terms, conditions, and programs required by the court, then, the judge shall, at the end of the period, strike the defendant's plea and dismiss the action against the defendant.

(b) Upon successful completion of the terms, conditions, or programs ordered by the court, the arrest upon which sentencing was deferred shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted deferred entry of judgment for the offense, except as specified in subdivision (c). A record pertaining to an arrest resulting in successful completion of the terms, conditions, programs ordered by the court shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(c) The defendant shall be advised that, regardless of his or her successful completion of the terms, conditions, or programs ordered by the court pursuant to this chapter, the arrest upon which the judgment was deferred may be disclosed by the Department of Justice in response to a peace officer application request and that, notwithstanding Section 1001.94, this section does not relieve him or her of the obligation to disclose the arrest in response to a direct question contained in a questionnaire or application for a position as a peace officer, as defined in Section 830.

1001.97. If, during the period of deferral imposed pursuant to subdivision (a) of Section 1001.94, the defendant reoffends or fails to comply with the terms, conditions, or programs required by the court, then the court, the probation officer, or the prosecuting attorney shall make a motion for entry of judgment, and the court shall sentence the defendant as if deferral had not occurred.

1001.98. Deferral of sentencing shall not be offered when any of the following conditions are met:

(a) The defendant has been convicted of any misdemeanor in the previous 10 years, a misdemeanor involving force or violence, or a felony.

(b) The defendant has previously had his or her sentence deferred pursuant to this chapter or any other law.

(c) Incarceration is mandatory upon the defendant's conviction.

(d) The defendant is required to register as a sex offender pursuant to Section 290.

(e) The magistrate determines that the offense will be prosecuted as a misdemeanor pursuant to paragraph (5) of subdivision (b) of Section 17.

(f) The defendant is a partnership, firm, association, corporation, limited liability company, or other legal entity.

(g) The victim is a person identified in Section 6211 of the Family Code, a minor, or an elder or dependent adult pursuant to Section 368.

(h) The charge includes any of the following:

(1) Force or violence against a peace officer.

(2) The unlawful use, possession, sale, or transfer of a dangerous weapon, firearm, or ammunition.

(3) Violation of Section 23152 or 23153 of the Vehicle Code.

(4) Violation of either subdivision (c) of Section 192 or subdivision (b) of Section 191.5.

(5) Violation of Section 186.22.

(6) Violation of Section 273.5 or 273.6.

(7) Violation of an environmental or workplace safety crime, including, but not limited to, subdivision (a) of Section 5650 of the Fish and Game Code, Section 8670.64 of the Government Code, Section 25507 of the Health and Safety Code, Section 6423 or 6425 of the Labor Code, Section 387 of this code, or Section 13387 of the Water Code.

1001.99. This chapter shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

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